

Varsingh Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Aug-22-1989

Reported in : 1990CriLJ174

Judge : S.D. Zha, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34 and 436; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Cri. A. No. 212/1986

Appellant : Varsingh

Respondent : State of M.P.

Advocate for Def. : D.D. Vyas, Adv.

Advocate for Pet/Ap. : Amarsingh, Adv.

Disposition : Appeal allowed

Judgement :

S.D. Zha, J.

1. Appellant Varsingh (hereinafter called 'the accused') challenges his conviction under Section 436 of the I.P.C. and sentence of two years rigorous imprisonment awarded by the Additional Judge to the Court of Sessions Judge, Jhabua by his

judgment dated 5-4-1986.

2. Accused Varsingh was charged under Section 436 of the I.P.C. for having committed mischief by fire by setting fire on 29-6-1985 to a hut of Zhapdibai used as a human dwelling and for storing property. There were three other accused, who were charged under Section 436/34 of the I.P.C. and acquitted by the judgment.

3. The prosecution case is that Lalsingh (P.W. 1) and his wife Zhapdibai (P.W. 6) on 29-6-1985 at about 10.11 a.m. were at their hut. The accused persons and Lalsingh (P.W. 1) uncle of acquitted accused Premchand were getting their land measured. There was dispute over measurement of land. Lalsingh was not agreeing with the measurement and claimed some more land to be his own. Accused Varsingh and acquitted accused Ramchandra and Puna on this asked that Lalsingh's house be set on fire. It is alleged that accused Varsingh then lifted tuwar twigs from the house of Lalsingh, set it on fire with match-stick and then set the house on fire resulting in clothes, grain and other house-hold goods including hut worth in all Rs. 2000/- being destroyed by fire. Cries of Zhapdibai (P.W. 6) attracted Kunji (P.W. 2), Kabli (P.W. 3), Kasni (P.W. 4) and Premchand (P.W. 5) to the scene. The accused person ran away from the place of incident, Zhapdibai lodged first information report Ex. P.-1, which was written down by R.B. Shukla (P.W. 9). He effected seizure of burnt material from the place of incident and after usual investigation, put up challan against the accused.

4. Accused Varsingh pleaded not guilty to the charge under Section 436 of the I.P.C. In his examination under Section 313 of the Code of Criminal Procedure and defence he pleaded that there was no hut belonging to Lalsingh or Zhapdibai at the place in question. Ramswaroop Process-server of the District Court of Jhabua was examined to prove service of temporary injunction dated 8-5-1985 on defendant Lalsingh and other co-defendants on 14-5-1985. Learned Additional Judge found the appellant alone guilty and convicted and sentenced him as stated above.

5. At the hearing of the appeal, Shri Amarsingh learned counsel for the appellant submitted that evidence had been mis-appreciated and on the prosecution

evidence led no case against the appellant was made out. He also asserted that in fact, at the alleged place of incident, there was no hut belonging to Zhapdibai or Lalsingh. Shri D.D. Vyas, learned Government Advocate representing the respondent State defended the impugned judgment.

6. Taking up first Shri Amarsingh's contention that Lalsingh or Zhapdibai did not own or possess hut at the place of incident, this plea is dealt with by the trial judge in paras 23-24 of his judgment. Lalsingh (P.W. 1) and Kunji (P.W. 2) Kabli (P.W. 3) Kasni (P.W. 4) and Premchand (P.W. 5) Zhapdibai (P.W. 6) and Babulal Soni (P.W. 8) have all spoken to there being hut of Lalsingh and on the point, there was no cross-examination. The plea as to Lalsingh not having any hut was introduced for the first time in the examination of the accused. Shri Amarsingh's contention that whereas in defence-documents Ramchand's house is shown and Lalsingh's house is not shown which would mean that Lalsingh's hut was not there, cannot be accepted, in view of the overwhelming evidence of witnesses, aforesaid. Finding of the trial court on the point must be affirmed.

7. Taking up next, whether the accused set fire to the hut, the trial Court disbelieved all other witnesses and believed only Zhapdi (P.W. 6). Her evidence is discussed by the trial Court in para 35 of the judgment. The trial court observed that there was contradiction between First information report. Ex. P./1 and version given by the witness before the court. Whereas in the court the witness besides accused Varsingh also involved. Accused Ramchand as having set fire to the hut, in the first-information report, she had not involved accused Ramchand. The trial court held that so far as the present accused-appellant Varsingh is concerned, his role was corroborated by the first information report lodged soon after the incident.

8. There is undoubted enmity between the parties. Zapdi's husband Lalsingh was prosecuted for having caused injuries with an arrow to the accused Varsingh and had been sentenced on that count. There have been number of cases between the parties. From her cross-examination it is seen that she was contradicted on the point of acquitted accused Dhumsingh asking other accused to set fire to the hut. The witness cannot be said to be wholly reliable witness, as classified in *Vadivelu Thevar v. State of Madras*, AIR 1957 SC 614 :(1957 Cri LJ 1000). She is neither

wholly reliable nor wholly unreliable as observed in the decision (supra). The court has to circumspect and has to look for corroborating material particulars by reliable testimony, direct or circumstantial. The court has to consider whether it can be reasonably satisfied to act even upon the testimony of a single witness for the purpose of convicting a person.

In the instant case Zhapdibai (P.W. 6) in first information report Ex. P/1, had not ascribed to acquitted accused Ramchand the act of setting fire to her hut, but in the court she improved upon her F.I.R. version and implicated him along with the present accused in setting fire to the hut. This would show that witness can modulate her evidence for the deliberate purpose of securing a conviction.

9. On going through the statement it is also seen that her evidence is of bald nature. She has stated that the accused Ramchand (acquitted) and Varsingh lifted tuwar twigs from her house set the same on fire and then set her hut on fire. She does not say as to how fire was set. She does not speak about the match-box. She does not speak about the role of each of the two above named persons and the mode or manner in which the two set her house on fire.

10. In *Badri v. State of Rajasthan*. (AIR 1976 SC 560) : (1976 Cri LJ 496), a case of murder the Supreme Court held as under (Para 18) :

'If a witness, who is the only witness against the accused to prove a serious charge of murder can modulate his evidence to suit a particular prosecution theory for the deliberate purpose of securing a conviction, such a witness cannot be considered as a reliable person and no conviction can be based on his sole testimony.'

In the same judgment first information report was lodged promptly. The Supreme Court held that (para 14) :

'Even the prompt lodging of the first information report and showing Patram as an eye-witness therein would not be the requisite corroboration needed for the purpose of accepting the testimony of Patram. Besides, if Patram is himself not absolutely reliable his repeating the name of the accused to several persons after

the occurrence would not add to the quality of his evidence.'

Above observations of the Supreme Court though given in the context of the murder case are apposite for the evidence of Zhapdibai, who was held only partly reliable by the trial Court. The trial Court was, however impressed with prompt first information report and the name of the accused therein. In view of the observations (supra) of the Supreme Court, I do not consider it safe to convict the appellant on the sole testimony of Zhapdibai (P.W. 6).

11. The appeal is therefore, allowed and the conviction and sentence of the appellant set aside.

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